IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Prem Sukh Vs. State of Rajasthan & Ors..
D.B. HABEAS CORPUS WRIT PETITION NO.1308/2007

Writ Petition
under Article 226 of the Constitution of India.

DATE OF ORDER :: 29th March , 2007.

PRESENT

HON'BLE MR.JUSTICE S. P. PATHAK
HON'BLE MR.JUSTICE D.N. THANVI

Mr. Manoj Bohra and Mr. B.S. Gaur for petitioner.
Mr. S.K. Vyas, G.A.
Ms. Premlata Dabi, Assisting Advocate.

By this petition moved under Article 226 of the Constitution of India, the petitioner, who is father of corpus namely Minaxi, prayed that she be produced in the Court.

In pursuance to the order passed by this Court on 15.03.2007, the corpus was produced in the Court on 21.03.2007 and order was passed on that day to the effect

that corpus be examined by a medical board. In pursuance of the order, Medical Board was constituted by the Superintendent, Mahatama Gandhi Hospital, Jodhpur. Report of the examination of corpus makes a mention that the age of corpus is between 17 to 19 years. It is also stated that she is about 18 years of age. When the girl was produced in the Court on 21.03.2007 at about 10:30 in the morning, she was relegated to our chamber in the company of lady Advocate Ms. Premlata Dabi. She remained in the chamber for about two hours and when we came in chamber, we put certain questions to the corpus and satisfied ourselves that she was not under any fear or influence and was quite matured. She was also asked to record her statement in her own hand writing, wherein she expressed her desire to live with respondent No.4. She also stated that she is desirous to marry respondent No.4. On that day she was sent to Nari Niketan for further reflection. She, thereafter, was produced in the Court on 26.03.2007. Again at the request of the learned counsel for the petitioner the corpus was sent to Nari Niketan for further reflection. It shall be proper to notice this important aspect of the matter that she has been kept in Nari Niketan nearly

for 12 days, Therefore, we are of the opinion that she is not under any pressure and she is stating at her own volition in the Court.

Today, she was produced in the Court at 10:30 AM in the morning. She was asked to sit in the chamber and again she was asked certain question. She has stated that she is not willing to go to her parents' house. She has also stated in the presence of Advocates for both sides that there is danger to her life in case she is sent to her parental house.

We have heard learned counsel for the parties and carefully perused the statement of the corpus and also the medical report and the educational certificate issued by the Central Board of Secondary Education, Delhi, which shows her date of birth as 07.01.1990.

The contention of the learned counsel for the petitioner has been that she is below 18 years of age as per educational certificate, therefore, she being minor should be handed over to the parents. It has also been contended

that she was under influence of respondent No.4 Jitendra and was detained in his illegal custody, therefore, custody of the minor is required to be given to the parents. It is also the contention of the learned counsel that as per the information given by the petitioner, the respondent No.4 is a criminal, therefore, the interest of minors are to be watched.

On the other hand, learned Govt. Advocate submitted that on medical examination of corpus Minaxi, she is found to be 18 years of age and as per educational certificate as on today her age is 17 years and 3 months. In reply to the contention of respondent No.4 being a criminal, the learned Govt. Advocate informed that as of today no criminal case of any nature is pending against respondent No.4 Jitendra. It is submitted that proper orders be passed.

We have considered the submissions made before us.

In the present matter, following points require consideration:

(1)Whether the corpus was detained in illegal custody by respondent No.4 or not?,

(2)Whether the corpus has attained the age of discretion and if that is so, should she be asked to go to her desired place or in the custody of her parents?,

(3)What orders are required to be passed while disposing of the petition?

Now we propose to examine the points framed by us.

Point No.1:

No return to the petition has been filed. A perusal of the contents of petition go to show that allegations are mainly to the effect that on 16.02.2007 the corpus, who is a minor, was abducted by respondent No.4. A First Information Report to that effect was filed and after filing the present petition, corpus was produced in the Court and she made her statement wherein she in very clear

words has stated that she at her own volition left the house of her parents and is living with respondent No.4 Jitendra. She has also disclosed the reason why she has left the house of her parents. It is stated by her that her parents were trying to forcibly get her married at some other place and in these circumstances when she found that there was danger to her life, she left the house of her parents. This statement was recorded on 21.03.2007. Thereafter, she was sent to Nari Niketan and it was ordered that she be produced in Court on 26.03.2007 after her medical examination. The Medical examination of the corpus about her age took place and the Medical Board has opined that she is about 18 years of age. It appears from the statement of the corpus which was recorded by herself that she is 19 years of age. The educational certificate makes mention of her date of birth as 01.09.1990.

In view of above, there is no hesitation in reaching to the conclusion that corpus is above 17 years of age and she had defintely attained the age of discretion. The point which has to be seen is as to whether respondent No.4 has illegally detained the corpus. On a glance over the

statement, reduced in writing in presence of both the sides, it appears that the corpus at her own volition left the parental home and it was not the respondent No.4 who was in any manner responsible for the leaving of parental house by the corpus. Therefore, we are of the opinion that the corpus willingly left the house of her parents and started living with respondent No.4 and as such it cannot be said that there was any illegal detention by respondent No.4.

In view of above, the answer to Point No.1 is that respondent No.4 cannot be held liable for illegal detention of the corpus as she left the parental home at her own volition.

Point No.2:

In the petition, though allegations have been levelled that corpus is a minor girl, therefore her custody should be handed over to the parents but while discussing Point No.1 we have found that the corpus according to educational certificate her age is 17 years and 3 months,

as per the medical examination her age is 18 years and as per the statement which the corpus herself has recorded, she has stated her age to be 19 years.

In view of above factual background, there is no hesitation for reaching to the conclusion that she is either 18 years of age or near 18 years but it cannot be said that she has not attained the age of discretion. It shall be proper here to give reference to a decision rendered by the Delhi High Court in Ravi Kumar Vs. State & Another, in WP (Crl.) No.942/2005 decided on October 5, 2005 wherein the question regarding custody of the corpus arose and the Hon'ble Delhi High Court relying on various decisions rendered by Hon'ble the Apex Court and other High Courts observed that it is not always necessary to give complete go-bye to the desire of the corpus. In the present case also when it has been clearly established on record that she has crossed 17 years and 3 months and the educational certificate and medical evidence shows that she is 18 years old and in the statement which has been reduced in writing by corpus herself she has stated her age to be 19 years. We have also asked questions to satisfy ourselves whether she

is mature enough to understand about her welfare or not and she has clearly stated that she knows her welfare very well and she is also aware that the respondent No.4 who is having only one Kidney and her marriage life would be too happy with the respondent No.4 she with folded hands made request to the Court that in any circumstance she be not sent to her parental home. In view of above factual ground, we find that the desire of the corpus requires consideration by the Court.

It is further to be seen that the respondent No.4 is by caste Soni and the corpus is also by caste Soni. It has also been brought to the notice of the Court that in respondent No.4 is in distant relation of the petitioner.

Taking the entire facts and circumstances of the case, we are of the opinion that the corpus is required to be left at the place of her desire.

In view of above discussion, answer to Point No.2 is that Corpus has attained the age of discretion and her desire should be taken into consideration and she should be

allowed to go to a place of her desire.

Point No.3:

In view of answers recorded by us in relation to Point No.1 & 2, we deem it proper that while deciding the petition the corpus should be left at her desired place in the police custody. She has been produced by Virendra Singh, CI, who shall see to it that conveniently she is left to her desired place.

In view of our findings recorded on the points framed by us hereinabove, there remaining nothing to be decided in this petition.

The petition stands disposed of accordingly.

(D.N. THANVI)J. **(SATYA PRAKASH PATHAK)J.**

/jpa